



Kansas Administrative Regulations
Kansas Department of Health and Environment

Notice to Reader

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Where possible KDHE will append changed regulations to the appropriate article. Once again, the lack of any attachments should not be construed as meaning there are no revisions.

Nothing contained herein should be construed as legal advice by KDHE. If you are not an attorney, you should secure competent counsel to interpret the regulations and advise you.

Public Information Office
Kansas Department of Health & Environment

Notes

The *Kansas Register* notes the following changes:

28-31-10a	Amended	V. 16, p. 1048
28-31-1	Amended	V. 18, p. 673
28-31-2	Amended	V. 18, p. 673
28-31-3	Amended	V. 18, p. 674
28-31-4	Amended	V. 18, p. 674
28-31-6	Amended	V. 18, p. 678
28-31-8	Amended	V. 18, p. 679
28-31-8b	Amended	V. 18, p. 680
28-31-9	Amended	V. 18, p. 680
28-31-10	Amended	V. 18, p. 681
28-31-12	Amended	V. 18, p. 681
28-31-13	Amended	V. 18, p. 682
28-31-14	Amended	V. 18, p. 682
28-13-15	New	V. 18, p. 682
28-14-16	New	V. 18, p. 682

Article 31.--Hazardous Waste Management Standards and Regulations.

28-31-1. General Provisions. (a) Any reference in this article to standards, procedures, or requirements of 40 CFR parts 124, 260, 261, 262, 263, 264, 265, 266, 268, 270, 273, or 279 as in effect on July 1, 1996, and 49 CFR Parts 172, 173, 178, or 179, as in effect on October 1, 1996, inclusive shall constitute a full adoption by reference of the part, subpart, and paragraph so referenced, including any associated notes and appendices, unless otherwise specifically stated in these rules and regulations.

(b) When used in any provision adopted from 40 CFR Parts 124, 260, 261, 262, 263, 264, 265, 266, 268, 270, 273, or 279 as in effect on July 1, 1996, inclusive, references to "the United States" shall be replaced with "the state of Kansas," "environmental protection agency" shall be replaced with the "Kansas department of health and environment," "administrator" or "regional administrator" shall be replaced with the "secretary" and "Federal Register" shall be replaced with the "Kansas Register." (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

28-31-2. Definitions. (a) **Incorporation.** 40 CFR 260, subpart B, as in effect on July 1, 1996, is adopted by reference.

(b) **"Disposal authorization"** means approval from the secretary to dispose of hazardous waste in Kansas.

(c) **"EPA generator"** means any person who meets any of the following conditions:

(1) Generates in any single calendar month 1,000 kilograms (2,200 pounds) or more of hazardous waste;

(2) accumulates at any time 1,000 kilograms (2,200 pounds) or more of hazardous waste;

(3) generates in any single calendar month 1 kilogram (2.2 pounds) or more of acutely hazardous waste;

(4) accumulates at any time 1 kilogram (2.2 pounds) or more of acutely hazardous waste;

(5) generates in any single calendar month 25 kilograms (55 pounds) or more of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of any acutely hazardous waste; or

(6) accumulates at any time 25 kilograms (55 pounds) or more of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of acutely hazardous waste.

(d) **"Kansas generator"** means any person who meets all of the following conditions:

(1) Generates in any single calendar month 25 kilograms (55 pounds) or more and less than 1,000 kilograms (2,200 pounds) of hazardous waste;

(2) accumulates at any time less than 1,000 kilograms (2,200 pounds) of hazardous waste;

(3) generates in any single calendar month less than 1 kilogram (2.2 pounds) of acutely hazardous waste;

(4) accumulates at any time less than 1 kilogram (2.2 pounds) of acutely hazardous waste;

(5) generates in any single calendar month less than 25 kilograms (55 pounds) of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of acutely hazardous waste; and

(6) accumulates at any time less than 25 kilograms (55 pounds) of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of acutely hazardous waste.

(e) **"Small quantity generator"** means any person who meets both of the following conditions:

(1) Generates in any single calendar month less than 25 kilograms (55 pounds) of hazardous waste; and

(2) meets the conditions of a Kansas generator listed in paragraphs (d)(2) through (d)(6) of this regulation.

(f) **Differences between state and federal definitions.** When the same word is defined both in the Kansas statutes or these regulations and in any federal regulation adopted by reference in these rules and

regulations and the definitions are not identical, the definition prescribed in the Kansas statutes or regulations shall control. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985, amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

28-31-3. Identification of Characteristics and Listing of Hazardous Waste. (a) Incorporation. 40 CFR Part 261, as in effect on July 1, 1996, is adopted by reference, except for 261.5.

(b) Rulemaking petitions. 40 CFR Part 260, subpart C, except for 260.21 and 260.22, as in effect on July 1, 1996, is adopted by reference. A reevaluation of a petition that has previously been approved may be conducted by the department at any time for just cause. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

28-31-4. Standards for Generators of Hazardous Waste. (a) Purpose, scope and applicability. Each generator of hazardous waste and each person who imports hazardous waste into Kansas shall comply with this regulation. In addition, each owner or operator of a treatment, storage, or disposal facility who initiates a shipment of hazardous waste shall comply with this regulation.

(b) Hazardous waste determination. Each person who generates solid waste, as defined by 40 CFR 261.2, as in effect on July 1, 1996, shall determine if that waste is a hazardous waste using all of the following methods.

(1) Each person shall first determine if the waste is excluded from regulation under 40 CFR 261.4, as in effect on July 1, 1996.

(2) If the waste is not excluded under paragraph (b)(1), the person shall next determine if the waste is listed as a hazardous waste in 40 CFR 261, subpart D, as in effect on July 1, 1996.

(3) If the waste is not listed as a hazardous waste in 40 CFR 261, subpart D, as in effect on July 1, 1996, the person shall determine whether or not the waste is identified in 40 CFR 261, subpart C, as in effect July 1, 1996, by one of the following means:

(A) Submitting the waste for testing according to the methods in 40 CFR 261, subpart C, as in effect on July 1, 1996, by a laboratory that is certified for these analyses by the department; or

(B) applying knowledge of the hazardous characteristics of the waste in light of materials or processes used.

(4) If the waste is determined to be hazardous, the generator shall refer to 40 CFR Parts 261, 262, 264, 265, 266, 268, and 273, as in effect on July 1, 1996, for possible exclusions or restrictions pertaining to management of each specific waste.

(c) EPA identification numbers.

(1) Each Kansas or EPA generator shall apply for and obtain an EPA identification number from the department before treating, storing, disposing, transporting, or offering for transportation any hazardous waste. Each generator who has not received an EPA identification number shall apply to the department using a form supplied by the department. Whenever there is a change in the information originally submitted to obtain an EPA identification number, the generator shall update that information. The generator shall submit these changes to the department on KDHE form 8700-12.

(2) Each Kansas or EPA generator shall offer hazardous waste only to transporters or to treatment, storage, or disposal facilities that have an EPA identification number.

(d) Manifest requirements.

(1) General requirements. Each Kansas or EPA generator who transports hazardous waste or offers

hazardous waste for transportation for off-site treatment, storage, or disposal shall prepare and use a manifest with the OMB control number 2050-0039 that complies with EPA form 8700-22, and if necessary, form 8700-22A, according to the instructions included in the appendix to 40 CFR Part 262, as in effect on July 1, 1996. The generator shall comply with all of the following requirements.

(A) Each generator shall designate on the manifest one facility permitted to handle the waste described on the manifest.

(B) Any generator may also designate on the manifest one alternate facility permitted to handle the waste if an emergency prevents delivery of the waste to the primary designated facility.

(C) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

(2) Acquisition of manifests. If the shipment is to be transported to a state requiring use of that state's manifest, then the generator shall use the manifest of the consignment state. If the consignment state does not supply the manifest, then the generator may obtain the manifest from any source.

(3) Number of copies. At a minimum, the manifest shall have sufficient copies to provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for the records and another copy to be returned to the generator.

(4) Use of the manifest. The generator shall perform all of the following:

(A) Sign the manifest certification by hand;

(B) obtain the handwritten signature of the initial transporter and the date of acceptance on the manifest;

(C) retain one copy for the generator's records; and

(D) give the transporter the remaining copies of the manifest.

(5) Water shipments. When bulk shipments of only hazardous waste are transported within the United States solely by water, the generator shall send three copies of the manifest, dated and signed in accordance with this subsection, to the owner or operator of the

designated facility or the last bulk water transporter to handle the waste in the United States if exported by water. Copies of the manifest shall not be required for any transporter.

(6) Rail shipments. When rail shipments of hazardous waste within the United States originate at the site of generation, the generator shall send at least three copies of the manifest, dated and signed in accordance with this subsection, to one of the following:

(A) The next non-rail transporter, if any;

(B) the designated facility, if transported solely by rail; or

(C) the last rail transporter to handle the waste in the United States, if exported by rail.

(7) Manifest exemption. The requirements of this subsection shall not apply to Kansas generators when the waste is reclaimed under a contractual agreement that meets all of the following requirements:

(A) The type of waste and frequency of shipments are specified in the agreement.

(B) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste.

(C) The generator maintains a copy of the reclamation agreement for at least three years after termination or expiration of the agreement.

(e) Pre-transport requirements.

(1) Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, each Kansas or EPA generator shall package the waste in accordance with 49 CFR Parts 173, 178, and 179, as in effect on October 1, 1996.

(2) Labeling. Before transporting or offering hazardous waste for transportation off-site, each Kansas or EPA generator shall label each package in accordance with 49 CFR Part 172, as in effect on October 1, 1996.

(3) Marking.

(A) Before transporting or offering hazardous waste for transportation off-site, each Kansas or EPA generator shall mark each package of hazardous waste in accordance with 49 CFR Part 172, as in effect on October 1, 1996.

(B) Before transporting hazardous waste or offering hazardous waste for transportation off-site, each Kansas or EPA generator shall mark each container of 110 gallons or less used in transportation in accordance with the requirements of 40 CFR 262.32(b), as in effect on July 1, 1996.

The required statement and information shall be displayed in accordance with the requirements of 49 CFR 172.304, as in effect on October 1, 1996.

(4) Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, each Kansas or EPA generator shall placard or offer the initial transporter the appropriate placards according to 49 CFR 172, subpart F, as in effect on October 1, 1996.

(f) Record keeping and reporting.

(1) Record keeping.

(A) Each Kansas or EPA generator shall keep a copy of each signed manifest. This signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter or until receipt of a copy signed by a representative of the designated facility that received the waste. The copy signed by the designated facility shall be retained as a record for at least three years from the date on which the waste was accepted by the initial transporter.

(B) Each Kansas or EPA generator shall keep a copy of each exception report required by paragraph (f)(4) of this regulation, and each EPA generator shall keep a copy of each biennial report required by paragraph (f) (2) of this regulation. Each Kansas or EPA generator shall keep these reports for a period of at least three years from the due date of the reports.

(C) Each Kansas or EPA generator shall keep records of all test results, waste analyses, and other determinations for at least three years from the date that the waste was last sent for on-site or off-site treatment, storage, or disposal.

(D) The periods for retention referred to in this regulation shall be extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the secretary.

(2) Biennial report.

(A) Each EPA generator shall prepare and submit

a single copy of a biennial report to the secretary by March 1 of each even-numbered year. The EPA generator shall submit the biennial report on a form provided by the department and shall cover generator activities during the previous calendar year or years. The biennial report shall include the following information:

(i) The EPA identification number, name, and address of the generator;

(ii) the calendar year or years covered by the report;

(iii) the EPA identification number, name, and address for each off-site treatment, storage, or disposal facility to which waste was shipped. For exported shipments, the report shall give the name and address of the foreign facility;

(iv) the name and EPA identification number of each transporter used;

(v) a description of the waste and the EPA hazardous waste number, DOT hazard class, and quantity of each hazardous waste shipped off-site. This information shall be listed by EPA identification number of each off-site treatment, storage, or disposal facility to which waste was shipped;

(vi) a description of the efforts undertaken to reduce the volume and toxicity of waste generated;

(vii) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent that this information is available; and

(viii) the certification signed by the generator or authorized representative.

(B) Each generator who treats, stores, or disposes of hazardous waste on-site shall submit a biennial report covering those wastes in accordance with the provisions of 40 CFR Parts 270, 264, 265, and 266, as in effect on July 1, 1996.

(3) Annual monitoring fee reports. Each EPA generator shall prepare and submit a report to the secretary by March 1 of each year that details the total quantities of hazardous waste produced during the previous calendar year. The generator shall pay and submit the monitoring fee required by K.A.R. 28-31-10(g) with the report.

(4) Exception reporting.

(A) Each Kansas or EPA generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date on which the waste was accepted by the initial transporter, shall contact the transporter, the owner or operator of the designated facility, or both, to determine the status of the hazardous waste.

(B) Each Kansas or EPA generator who has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date on which the waste was accepted by the initial transporter shall submit an exception report to the secretary. The exception report shall include both of the following:

- (i) A legible copy of the manifest for which the generator does not have confirmation of delivery; and
- (ii) a cover letter signed by the generator or authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(5) Additional reporting. At any time, a generator may be required by the secretary to furnish additional reports concerning the quantities and disposition of hazardous wastes.

(g) Accumulation time for EPA generators.

Any EPA generator may accumulate hazardous waste on-site for 90 days or less without a permit or without obtaining interim status, and shall be exempt from all the requirements in 40 CFR 265, subparts G and H, except for 265.111 and 265.114, as in effect on July 1, 1996, if all of the following conditions are met:

(1) The waste is handled using one of the following methods:

(A) Placed in containers and the generator complies with 40 CFR 265, subpart I, as in effect on July 1, 1996;

(B) placed in tanks and the generator complies with 40 CFR 265, subpart J, except sections 265.197(c) and 265.200, as in effect on July 1, 1996;

(C) collected on drip pads and the generator complies with 40 CFR 262.34(a)(1)(iii)(A) and (B) and 40 CFR 265, subpart W, as in effect on July 1, 1996;

or

(D) placed in containment buildings and the generator complies with 40 CFR 262.34(a)(1)(iv)(A) and (B) and 40 CFR 265, subpart DD, as in effect on July 1, 1996.

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and tank.

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste".

(4) The generator complies with the requirements in 40 CFR 265, subparts C and D, with 265.16, and, if conducting treatment, with 268.7(a)(4), as in effect on July 1, 1996.

(h) Hazardous waste accumulation by Kansas generators.

(1) Any Kansas generator may accumulate hazardous waste on-site without a permit, interim status, or time restrictions, and shall be exempt from all the requirements in 40 CFR 265, subparts G and H, except for 265.111 and 265.114, as in effect on July 1, 1996, if all of the following conditions are met:

(A) The quantity of waste accumulated never exceeds 1,000 kilograms of hazardous waste or 1 kilogram of acutely hazardous waste. If at any time more than these quantities are accumulated, all of those accumulated wastes shall be subject to regulations that are applicable to EPA generators.

(B) The waste is handled using one of the following methods:

(i) Placed in containers and the generator complies with 40 CFR 265 subpart I, except 265.176 and 265.178, as in effect on July 1, 1996;

(ii) placed in tanks and the generator complies with 40 CFR 265, subparts J, AA, and BB, except 265.197(c), 265.200, 265.201, and 265.202, as in effect on July 1, 1996; or

(iii) collected on drip pads and the generator complies with 40 CFR 262.34(a)(1)(iii)(A) and (B) and 40 CFR 265 subpart W, as in effect on July 1, 1996.

(C) The date upon which each period of accumulation begins is clearly marked and visible for inspection.

(D) While being accumulated on-site, each container and tank is labeled or clearly marked with the words "Hazardous Waste."

(E) At least one employee who is designated as the emergency coordinator is either on the premises or on call at all times with the responsibility for coordinating all emergency response measures specified in this section. For the purposes of this regulation, "on call" means that the emergency coordinator is available to respond to an emergency by reaching the facility within a short period of time.

(F) All of the following information is posted next to at least one telephone that is immediately accessible by employees during an emergency:

(i) The name and telephone number of the emergency coordinator;

(ii) the location of fire extinguishers and spill-control material, and if present, fire alarms; and

(iii) the telephone number of the fire department unless the facility has a direct alarm.

(G) Each employee is thoroughly familiar with proper waste handling and emergency procedures that are relevant to the employee's responsibilities during normal facility operations and emergencies.

(H) The emergency coordinator or designee is prepared to respond to any emergencies that arise. The appropriate responses shall be the following: (i) In the event of a fire, the emergency coordinator or designee shall call the fire department or attempt to extinguish the fire using a fire extinguisher.

(ii) In the event of a spill, the emergency coordinator or designee shall contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, or other release that could threaten human health outside the facility, or when it appears that a spill has reached surface water, the emergency coordinator shall immediately notify the national response center using the 24-hour toll-free number 800-424-8802.

(2) All reports to the national response center shall contain the following information:

(A) The name, address, and U.S. EPA identification

number of the generator;

(B) the date, time, and type of incident;

(C) the quantity and type of hazardous waste involved in the incident;

(D) the extent of any injuries; and

(E) the estimated quantity and disposition of recovered materials, if any.

(i) Extension of accumulation time. Each EPA generator who accumulates hazardous waste for more than 90 days shall be considered an operator of a storage facility and shall be subject to the requirements of 40 CFR Parts 124, 264, 265 and 270, as in effect on July 1, 1996, unless granted an extension to the 90-day period. This extension may be granted if hazardous wastes need to remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted by the secretary upon written request by the EPA generator. Additional extensions not to exceed 30 days may be granted if the circumstances continue to be valid.

(j) Satellite accumulation areas.

(1) Any Kansas or EPA generator may accumulate as many as 55 gallons of each type of hazardous waste or one quart of acutely hazardous waste in no more than one container at or near any point of generation where wastes initially accumulate, and that is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsections (g) and (h), if the generator performs both of the following:

(A) Complies with 40 CFR 265.171, 265.172, and 265.173(a), as in effect on July 1, 1996; and

(B) marks the containers with the words "Hazardous Waste."

(2) At the time the generator accumulates more than the amounts listed in this subsection at any satellite accumulation area, the date shall be placed on the full container. This date shall become the accumulation start date for this container, and the generator shall move the full container to the hazardous waste storage area within three days. The empty container in which waste is accumulated at the satellite area shall be managed in accordance with paragraph (j)(1) of this

subsection.

(k) Inspection requirement. Each Kansas or EPA generator shall document weekly inspections of hazardous waste storage areas and daily inspections of tanks in accordance with 40 CFR 265.15(d) and 40 CFR 265.195, as in effect on July 1, 1996.

(l) Transportation restrictions. Each Kansas or EPA generator shipping hazardous waste or offering hazardous waste for transport shall use only a transporter who has properly registered with the department according to K.A.R. 28-31-6.

(m) Small quantity generator requirements. Small quantity generators shall be subject to the following requirements:

(1) If at any time more than a total of 1,000 kilograms of hazardous waste or one kilogram of acutely hazardous waste is accumulated, all of those accumulated wastes shall be subject to regulations applicable to EPA generators. Upon exceeding 1,000 kilograms of hazardous waste or one kilogram of acutely hazardous waste, all requirements of subsection (g) of this regulation shall apply to the generator.

(2) Each small quantity generator who accumulates 25 kilograms or more of hazardous waste shall either recycle, treat or dispose of the waste in an acceptable on-site facility, or ensure delivery to an off-site hazardous waste treatment, storage, or disposal facility, or to some other waste management facility approved by the secretary, and shall be subject to the following requirements:

(A) The pre-transport requirements of subsection (e) of this regulation;

(B) the container and tank, dating, and marking requirements of paragraphs (h)(B), (C), and (D) of this regulation; and

(C) the inspection requirements of subsection (k) of this regulation.

(3) Each small quantity generator who accumulates up to 25 kilograms of hazardous waste may either treat or dispose of hazardous waste in an acceptable on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility. In either case, the facility shall meet at least one of the following requirements:

(A) Be permitted to manage hazardous waste;

(B) be operating under interim status;

(C) be permitted to manage solid waste; or

(D) beneficially treat, use or reuse, or legitimately recycle or reclaim its waste.

(n) Acutely hazardous waste requirements.

(1) All quantities of acutely hazardous waste shall be subject to this regulation and other regulations regarding transportation, treatment, storage, and disposal of hazardous waste if generated in one of the following quantities:

(A) A total, in any single calendar month, of one kilogram or more of acutely hazardous waste; or

(B) a total, in any single calendar month, of 25 kilograms or more of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acutely hazardous waste.

(2) If at any time acutely hazardous waste is accumulated in quantities greater than those described in paragraph (n)(1), all of those accumulated wastes shall be subject to the requirements of this regulation and other regulations regarding transportation, treatment, storage, and disposal of hazardous waste. Upon exceeding these quantities, all requirements of subsection (g) shall apply to the generator.

(o) Quantity determinations.

(1) In determining the quantity of hazardous waste generated each calendar month, a generator shall not include either of the following :

(A) Hazardous waste when it is removed from on-site storage; or

(B) hazardous waste produced by on-site treatment including reclamation of hazardous waste, as long as the hazardous waste that is treated or reclaimed is counted each time before treatment or reclamation.

(2) Hazardous waste that is subject to the requirements of 40 CFR 261.6(b) and (c), as in effect on July 1, 1996, and 40 CFR 266, subparts C and F, as in effect on July 1, 1996, shall be included in the quantity determination and shall be subject to the requirements of this regulation.

(p) Mixtures of hazardous waste.

(1) Whenever two or more hazardous wastes are mixed together, the resulting mixture shall be regulated

as follows:

(A) If a listed hazardous waste as defined by 40 CFR 261, subpart D, as in effect on July 1, 1996, is mixed with other listed hazardous waste, the resulting mixture shall be identified for purposes of generation, transportation, storage, treatment, and disposal by all listed hazardous waste numbers contained in the mixture.

(B) If a characteristic hazardous waste as defined by 40 CFR 261, subpart C, as in effect on July 1, 1996, is mixed with other characteristic hazardous waste, the resulting mixture shall be identified for purposes of generation, transportation, storage, treatment, and disposal by all characteristic hazardous waste numbers contained in the mixture. (i) Any person may demonstrate that mixing two different characteristic hazardous wastes is a satisfactory treatment method that results in the mixture no longer exhibiting any characteristic of hazardous waste.

(ii) Upon submittal of an acceptable demonstration, written approval indicating that the resulting mixture is not regulated as hazardous waste may be granted by the department.

(C) If a listed hazardous waste as defined by 40 CFR 261, subpart D, as in effect July 1, 1996, is mixed with characteristic hazardous waste as defined by 40 FR 261, subpart C, as in effect on July 1, 1996, the resulting mixture shall be identified for purposes of generation, transportation, storage, treatment and disposal by all listed and characteristic hazardous waste numbers contained in the mixture.

(2) Whenever hazardous waste is mixed with solid waste or nonhazardous material, other than used oil, the resulting mixture shall be regulated as follows:

(A) For characteristic hazardous waste as defined by 40 CFR 261, subpart C, as in effect on July 1, 1996, remain regulated as a characteristic hazardous waste.

(i) Any person may demonstrate that mixing characteristic hazardous waste with solid waste or nonhazardous materials is a satisfactory treatment method that results in the mixture no longer exhibiting any characteristic of hazardous waste.

(ii) Upon submittal of an acceptable demonstration,

written approval indicating that the resulting mixture is not regulated as hazardous waste may be granted by the department.

(B) For listed hazardous waste, as defined by 40 CFR 261, subpart D, as in effect July 1, 1996, the resulting mixture shall remain regulated as a listed hazardous waste unless it is listed solely because it exhibits one or more characteristics of hazardous waste identified in 40 CFR 261, subpart C, as in effect July 1, 1996, and the resulting mixture no longer exhibits these characteristics.

(3) Hazardous waste that is mixed with used oil shall be regulated as follows:

(A) If hazardous waste from a small quantity generator is mixed with used oil, the resulting mixture shall be subject to regulation as used oil under K.A.R. 28-31-16.

(B) If a Kansas or EPA generator mixes a characteristic or listed hazardous waste with used oil, the resulting mixture shall remain identified as a characteristic or listed hazardous waste.

(4) Small quantity generators may mix their hazardous waste with nonhazardous waste or other material and remain subject to the requirements of subsection (m) even though the resultant mixture exceeds the quantity limitations of subsection (m), unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR 261, as in effect on July 1, 1996.

(q) Exports of hazardous waste. 40 CFR 262, subpart E, as in effect on July 1, 1996, is adopted by reference.

(r) Imports of hazardous waste. 40 CFR 262, subpart F, as in effect on July 1, 1996, is adopted by reference.

(s) Farmers. 40 CFR 262, subpart G, as in effect on July 1, 1996, is adopted by reference. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982, amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended March 22, 1996;

amended June 4, 1999.)

28-31-5. Underground Burial of Hazardous Waste Prohibited. (a) Exception requests to the prohibition against underground burial of hazardous waste. Any person may petition the secretary to be granted an exception to the prohibition against underground burial of hazardous waste. Each request shall include the following:

- (1) A complete chemical and physical analysis of the waste;
- (2) a list and description of all technologically feasible methods which could be considered to treat, store or dispose of the waste;
- (3) for each method described in paragraph (2), an economic analysis based upon a 30-year time period. The analysis shall determine the costs associated with treating, storing, disposing and monitoring the waste during this time period; and
- (4) a demonstration that no economically reasonable or technologically feasible methodology exists for the disposal of that specific hazardous waste except for underground burial.

(b) Public notice and hearing for exception requests. Upon receipt of a request for an exception to the prohibition against underground burial of hazardous waste, the following actions shall be initiated:

- (1) The request shall be reviewed by the department to determine if it is complete and does not contain any deficiencies. If the request is not adequate, the person shall be notified of the specific deficiencies.
- (2) Upon receipt of a complete request, a notice shall be published by the secretary once per week for three consecutive weeks in a newspaper having major circulation in the county in which the exception is requested. The required published notice shall:
 - (A) identify the applicant and the specific waste along with a description of proposed disposal methods;
 - (B) include a map indicating the location of proposed underground burial;
 - (C) include the address of the location where the application and related documents may be reviewed and of the location where copies may be obtained; and
 - (D) described the procedure by which the request

will be reviewed, including a date and place for a public hearing.

(3) The public hearing shall be scheduled no sooner than 30 days from the date of the first public notice.

(4) A copy of the notice shall also be transmitted by the secretary to the clerk of any city which is located within three miles of the proposed underground burial site.

(5) A notice shall also be published by the secretary in the Kansas Register once per week for three consecutive weeks. That notice shall contain the same information required above.

(6) A public hearing shall be conducted at a location near the proposed underground burial facility.

(A) A hearing officer who is responsible for its scheduling and orderly conduct may be designated by the secretary.

(B) Any person may submit oral or written comments and data concerning the exception request. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

(C) The public comment period shall automatically be extended to the close of any public hearing. The hearing officer may also extend the comment period by so stating at the hearing.

(D) A tape recording or written transcript of the hearing shall be made available to the public.

(E) The hearing officer shall submit a report to the secretary detailing all written and oral comments submitted during the public comment period. The report may also recommend findings and determinations.

(c) Approval or denial of exception request.

(1) If it is determined that the exception request should be approved, an order shall be issued by the secretary. The order may require such conditions as the secretary deems necessary to protect public health and environment.

(2) If it is determined that there is not sufficient evidence to approve the request, the applicant shall be notified of the reasons why the request is denied.

(3) A public notice of the final decision to grant or deny the exception request shall be published in the newspaper having major circulation in the county in

which the exception was requested and in the Kansas Register.

(4) A copy of the final decision shall be transmitted to the clerk of any city which is located within three miles of the proposed underground burial site by the secretary. (Authorized by and implementing K.S.A. 65-3431; and K.S.A. 65-3458; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-6, March 22, 1985; amended, T-86-32, Sept. 24, 1985; amended, May 1, 1986; amended May 1, 1987; amended, Feb. 5, 1990; amended April 25, 1994.)

28-31-6. Standards for transporters of hazardous waste and used oil. Subsections (a) through (f) of this regulation shall apply to each person that transports more than 25 kilograms of hazardous waste or more than one kilogram of acutely hazardous waste, except small quantity generators transporting to a Kansas household hazardous waste facility that has a permit, issued by the department, to handle small quantity generator waste. Subsections (b) through (d) of this regulation shall apply to each person that is subject to the requirements for used oil transporters of 40 CFR 279.40 and 279.42, as in effect on July 1, 1996.

(a) Incorporation. 40 CFR Part 263, except 263.10(a), and 263.20(h), as in effect on July 1, 1996, is adopted by reference.

(b) Registration. Each person transporting hazardous waste or used oil within, into, out of, or through Kansas shall register with the department.

(1) The transporter shall submit the registration application on forms provided by the department.

(2) The transporter shall obtain written acknowledgment from the department that registration is complete before transporting hazardous waste or used oil within, into, out of, or through Kansas.

(3) The transporter shall carry a copy of the written acknowledgment in all vehicles transporting hazardous waste or used oil and shall provide the written acknowledgment for review upon request.

(c) Insurance requirements. Each transporter shall secure and maintain liability insurance on all vehicles transporting hazardous waste or used oil in

Kansas.

(1) The limits of insurance shall not be less than \$1 million per person and \$1 million per occurrence for bodily injury or death and \$1 million for all damages to the property of others. When combined bodily injury or death and property damage coverage are provided, the total limits shall not be less than \$1 million.

(2) If any coverage is reduced or canceled, the transporter shall notify the department in writing at least 35 days before the effective date of that action. (3) The transporter shall, before the expiration date of the policy, provide the department with proof of periodic renewal in the form of a certificate of insurance showing the monetary coverage and the expiration date

(d) Denial, suspension or revocation of registration. Any application may be denied and any transporter's registration may be revoked or suspended by written notice if the department determines that one or more of the following apply:

(1) The transporter failed or continues to fail to comply with any of the provisions of the air, water, or waste statutes relating to environmental protection or to the protection of public health, including regulations issued thereunder in this or any other state or by the federal government, or any condition of any permit or license issued by the secretary.

(2) The transporter has shown a lack of ability or intention to comply with one or more provisions of any law referred to in this subsection, or any regulation or order or permit issued pursuant to any such law, as indicated by past or continuing violations.

(3) The transporter, or any person who holds an interest in the transporter, who exercises total or partial control the transporter or is a principal of the parent corporation, is a principal of another corporation which would not be eligible for registration.

(e) Exemption from the manifesting requirement. Any transporter transporting hazardous waste from a Kansas generator shall be exempt from the requirements of 40 CFR 263, subpart B, as in effect on July 1, 1996, if all of the following conditions are met:

(1) The waste is transported pursuant to a reclamation agreement as provided for in K.A.R. 28-

31-4(d)(7).

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

(A) The name, address, and EPA identification number of the generator of the waste;

(B) the quantity of the waste accepted;

(C) all shipping information required by the U.S. department of transportation; and

(D) the date the waste is accepted.

(3) The transporter carries this record when transporting the waste to the reclamation facility.

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

(f) Transportation restrictions. Each transporter shall collect or transport hazardous waste only for generators or treatment, storage or disposal facilities that have provided proper notification in accordance with K.A.R. 28-31-4(c) and 40 CFR 264.11 and 265.11, as in effect on July 1, 1996. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982, amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

28-31-7. Standards for routing of hazardous waste. (a) Standards for preferred routes. Each transporter of hazardous waste shall ensure that any vehicle containing hazardous waste is operated over routes that minimize risk to public health and safety. The transporter shall consider available information on accident rates, transit time, population density and activities, time of day, and day of week during which transportation will occur to select a preferred route. Any transporter of hazardous waste may deviate from a preferred route under any of the following circumstances:

(1) Emergency conditions which make continued use of the preferred route unsafe;

(2) To make necessary rest, fuel, and vehicle repair stops; or

(3) To the extent necessary to pickup, deliver, or transfer hazardous wastes.

(b) Transporter responsibility. Each transporter shall bear the responsibility of confining the carriage of hazardous wastes to preferred routes. Unless notice to the contrary is given to the transporter or published in the "Kansas Register", all portions of the major highway system may be used. The major highway system is considered to be all interstate routes, U.S. highways, state highways, and temporary detours designated by the Kansas department of transportation. An interstate system bypass or beltway around a city shall be used when available. (Authorized by and implementing K.S.A. 1984 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective, May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended, May 1, 1985.)

28-31-8. Standards for hazardous waste storage, treatment, and disposal facilities. (a) Incorporation. 40 CFR Parts 264 and 265, except 40 CFR 264, subpart S and subpart CC and 40 CFR 265, subpart CC, as in effect on July 1, 1996, are adopted by reference.

(b) Marking requirements. Each operator of a hazardous waste container or tank storage facility shall mark all containers and tanks in accordance with the standards of K.A.R. 28-31-4(g)(3).

(c) Notice in deed to property. Each owner of property on which a hazardous waste treatment, storage, or disposal facility is located shall record, in accordance with Kansas law, a notice with the county register of deeds where the property is located that the land has been used to manage hazardous waste and that all records regarding permits, closure, or both are available for review at the department.

(d) Restrictive covenants and easements.

(1) Each owner of property on which a hazardous waste treatment, storage, or disposal facility is located may be required by the secretary to execute and file with the county register of deeds a restrictive covenant to run with the land that shall specify the uses that may be made after closure and require all of the following:

(A) All future uses of the property after closure shall be conducted in a manner that preserves the integrity of

waste containment systems designed, installed, and used during operation of the disposal areas, or installed or used during the post-closure maintenance period.

(B) The owner or tenant shall preserve and protect all permanent survey markers and benchmarks installed at the facility.

(C) The owner or tenant shall preserve and protect all environmental monitoring stations installed at the facility.

(D) The owner or tenant, subsequent property owners or tenants, and any person granted easement to the property, shall provide written notice to the department during planning of any improvement to the site and shall receive approval from the department before commencing excavation or construction of permanent structures or drainage ditches, alteration of contours, removal of waste materials stored on the site, changes in vegetation grown on areas used for waste disposal, the production or sale of food chain crops grown on land used for waste disposal, or removal of security fencing, signs, or other devices installed to restrict public access to waste storage or disposal areas.

(2) The owner of the property on which a hazardous waste treatment, storage, and disposal facility is located may be required by the secretary to execute an easement stating that the department, its duly authorized agents, or contractors employed by or on behalf of the department may enter the premises to accomplish any of the following:

(A) Complete items of work specified in a site closure plan required to be submitted by K.A.R. 28-31-8;

(B) perform any item of work necessary to maintain or monitor the area during the post-closure period; or

(C) sample, repair, or reconstruct environmental monitoring stations constructed as part of the site operating or post-closure requirements.

(3) Each offer or contract for the conveyance of easement, title, or other interest to real estate used for treatment, storage, or disposal of hazardous waste shall disclose all terms, conditions, and provisions for care and subsequent land uses that are imposed by these regulations or the site permit authorized and issued under K.S.A. 1997 Supp. 65-3431(s), and

amendments thereto. Conveyance of title, easement, or other interest in the property shall contain provisions for the continued maintenance of waste containment and monitoring systems.

(4) All covenants, easements, and other documents related to this regulation shall be permanent, unless extinguished by agreement between the property owner and the secretary. Recording fees shall be paid by the owner of the property.

(e) Hazardous waste injection wells.

(1) Each hazardous waste injection well shall be designed, constructed, and operated to comply with applicable requirements of K.A.R. 28-46-1 et seq.

(2) Wastes received from multiple generators by a hazardous waste facility, even if treated at the hazardous waste facility before injection, shall be batch-tested and the chemical composition confirmed by laboratory analyses before injection.

(A) Laboratory analysis of the composition of homogeneous and continuously generated injection fluids generated and disposed at a single site may be allowed on a monthly basis.

(B) The results of the laboratory analysis shall be the basis upon which the secretary determines whether injection of the fluids may occur.

(3) Monitoring shall be required for each constituent that was approved for injection. Monitoring of specified indicator constituents rather than the approved list of constituents may be allowed by the secretary, and monitoring of other constituents may be required as deemed necessary.

(f) Environmental monitoring. All samples analyzed in accordance with 40 CFR 264 and 265, subparts F and G, as in effect on July 1, 1996, shall be conducted by a laboratory certified for these analyses by the department.

(g) For hazardous waste received at a treatment, storage, or disposal facility with the intent of burning for destruction or energy recovery, all quantification analyses performed for the purpose of complying with permit conditions shall be performed by a laboratory certified for these analyses by the department. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective

May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

28-31-8a. Revoked. (Authorized by and implementing K.S.A. 65-3431, as amended by L. 1987, Ch. 295, Sec. 6; effective, T-85-42, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; revoked April 6, 1992.)

28-31-8b. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. 40 CFR Part 266, subparts C, F, G, and H, as in effect on July 1, 1996, are adopted by reference. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

28-31-9. Hazardous Waste Storage, Treatment, and Disposal Facility Permits. (a) Incorporation. 40 CFR Part 270 and Part 124, subparts A, B, E, and F, as in effect on July 1, 1996, are adopted by reference.

(b) **Background investigation.** Before submitting any application for a hazardous waste facility permit, the applicant shall submit a disclosure statement on forms provided by the department. The disclosure statement shall include the following information:

- (1) The name of the corporation;
- (2) past corporate names;
- (3) the place or places of incorporation;
- (4) the names of officers;
- (5) the names of former officers and directors;
- (6) partnership or joint venture information;
- (7) ownership and debt liability;
- (8) subsidiaries and stock holdings;
- (9) financial history;
- (10) employee data;
- (11) experience and credentials;
- (12) licenses and permits;
- (13) environmental violations history;

(14) environmental judgments and litigation; and
(15) criminal proceedings involving the applicant or the corporation. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

28-31-10. Hazardous Waste Monitoring Fees.

(a) Hazardous waste storage facility.

Each hazardous waste storage facility shall pay to the department an annual monitoring fee before January 1 of each year. This fee shall be based on the following schedule:

- | | |
|-------------------------------|----------|
| (1) On-site storage facility | \$ 2,500 |
| (2) Off-site storage facility | \$ 3,500 |

(b) **Hazardous waste treatment facility.** Each hazardous waste treatment facility shall pay to the department an annual monitoring fee before January 1 of each year. This fee shall be based on the following schedule:

- | | |
|-----------------------------------|----------|
| (1) On-site treatment facility | 4,000 |
| (2) Off-site treatment facility | \$ 5,000 |
| (3) Off-site incinerator facility | \$10,000 |

(c) **Hazardous waste disposal facility.** Each hazardous waste disposal facility shall pay to the department an annual monitoring fee before January 1 of each year. This fee shall be based on the following schedule:

- | | |
|---|----------|
| (1) On-site landfill or underground injection well | \$10,000 |
| (2) Off-site landfill or underground injection well | \$15,000 |

(d) **Facilities subject to post-closure care.** Each hazardous waste storage, treatment, or disposal facility subject to post-closure care shall pay an annual fee. This fee shall become applicable upon receipt by the department of the certification of closure specified in 40 CFR Part 264.115 or 40 CFR Part 265.115, as in effect on July 1, 1996. This fee shall be paid to the department before January 1 of each year. This fee shall be based on the following schedule:

- | | |
|---|---------|
| Facilities subject to post-closure care | \$4,000 |
|---|---------|

(e) **Multiple activities.** Each facility conducting more than one of the hazardous waste activities addressed in subsections (a), (b), (c), and (d) of this regulation shall pay a single fee. This fee shall be in the amount specified for the activity having the highest fee of those conducted. Each facility that is subject to post-closure care and has no remaining active storage, treatment, or disposal units shall be subject only to the monitoring fee specified in subsection (d).

(f) **Hazardous waste transporters.** Each hazardous waste transporter shall pay an annual monitoring fee. The hazardous waste transporter shall pay this fee at the time the transporter registers with the department in accordance with K.A.R. 28-31-6(b), and before January 1 of each year thereafter. This fee shall be based on the following schedule:

Transporter	\$250
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(g) **Hazardous waste generators.**

(1) Before March 1 of each year, each EPA generator shall pay to the department an annual monitoring fee for all hazardous waste generated during the previous calendar year. This fee shall be based on the following schedule:

Total Yearly Quantity Generated	Monitoring Fee
Less than or equal to 5 tons	\$100
Greater than 5 tons but less than or equal to 50 tons	\$500
Greater than 50 tons but less than or equal to 500 tons	\$1,000
Greater than 500 tons	\$5,000

(2) Hazardous waste that is reclaimed on-site to recover substantial amounts of energy or materials shall be exempt from payment of monitoring fees. This exemption shall not apply to hazardous waste residues produced during reclamation. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-2, Jan. 13, 1984; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended, T-87-49, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999.)

28-31-10a. Off-Site Hazardous Waste Treatment Fees. (a) Each off-site hazardous waste treatment facility shall pay fees proportionate to the quantity of hazardous waste treated, subject to the caps set forth in K.S.A. 1996 Supp. 65-3431, subsection (x). These fees shall be based upon the following schedule:

Hazardous Waste Category	Fee
Dioxin	\$20 per ton
Fewer than 5,000 British Thermal Units (BTUs) per pound	\$10 per ton
Equal to or greater than 5,000 BTUs per pound	\$2 per ton

For the purpose of calculating these fees, these definitions shall apply.

(1) "Dioxin" shall mean hazardous wastes carrying EPA hazardous waste numbers F020, F021, F022, F023, F026, F027, or F028, or any combination of these hazardous waste numbers. "Ton" shall mean 2,000 pounds.

(b) Payment of the treatment fees assessed under subsection (a) of this regulation shall be made quarterly. The quarterly fee shall be paid on or before the last day of April, July, October, and January for the preceding three-month period ending the last day of March, June, September, and December.

(c) **Each treatment fee payment shall meet these requirements:**

(1) be made by check or money order made payable to the "Kansas department of health and environment--attention: environmental permit fund"; and

(2) be accompanied by a form, furnished by the department and completed by the facility operator. The form shall state the total weight of hazardous wastes treated during the reporting period and shall provide sufficient information to verify findings that a treatment process qualified as material or energy recovery. (Authorized by and implementing K.S.A. 1996 Supp. 65-3431; effective April 6, 1992; amended July 7, 1997.)

28-31-11. Hazardous Waste Perpetual Care Trust Fund Fees. (a) **Hazardous waste disposal facilities.** Each active hazardous waste disposal facility

shall pay a monthly perpetual care trust fund fee, based on the poundage of hazardous waste disposed at the facility.

(1) The poundage of waste shall be determined prior to addition of those materials which are added at the disposal facility to treat the wastes.

(2) The fee shall be \$0.005 per pound of hazardous waste disposed in landfills, \$0.00000455 per pound of hazardous waste disposed by deep well injection and \$0.001 per pound of hazardous waste disposed by other methods.

(3) All calculations of this fee shall apply to the total hazardous waste poundage.

(b) Monthly reports. On or before the 20th day of each month, the operator of any hazardous waste disposal facility shall prepare and submit to the department a statement giving the following information:

(1) The name and location of the operator;

(2) the total poundage of hazardous waste disposed at the facility during the preceding calendar month; and

(3) a check for the calculated fee which is payable to the department and designated for the hazardous waste perpetual care trust fund. (Authorized by and implementing K.S.A. 65-3431; effective E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended April 25, 1994.)

28-31-12. Inspections. (a) Upon presentation of credentials and stating the purpose of the visit, the following may be performed at any reasonable hour of the day by the secretary or any duly appointed representative:

(1) Enter any factory, plant, construction site, hazardous waste storage, treatment, or disposal facility, or other location where hazardous wastes may potentially be generated, stored, treated, or disposed, and inspect the premises to gather information regarding existing conditions and procedures;

(2) obtain samples of actual or potential hazardous waste from any person or from the property of any person, including samples from any vehicle in which hazardous wastes are being transported;

(3) stop and inspect any vehicle, if there is

reasonable cause to believe that the vehicle is transporting hazardous wastes;

(4) conduct tests, analyses, and evaluations of wastes to determine whether or not the wastes are hazardous wastes and whether or not the requirements of these regulations are being met;

(5) obtain samples from any containers or facsimiles of container labels;

(6) inspect and copy any records, reports, information, or test results relating to wastes generated, stored, transported, treated, or disposed;

(7) photograph or videotape any hazardous waste management facility, device, structure, or equipment;

(8) drill test wells or groundwater monitoring wells on the property of any person where hazardous wastes are generated, stored, transported, treated, disposed, discharged, or migrating off-site and obtain samples from the wells; and

(9) conduct tests, analyses, and evaluations of soil, groundwater, surface water, and air to determine whether the requirements of these regulations are being met.

(b) If, during the inspection, unsafe or unpermitted hazardous waste management procedures are discovered, the operator of the facility may be instructed by the secretary's representative to retain and properly store hazardous wastes, pertinent records, samples, and other items. These materials shall be retained by the operator until the waste has been identified and the department determines the proper procedure to be used in handling the waste.

(c) When obtaining samples, the facility operator shall be allowed to collect duplicate samples for separate analyses.

(d) During the inspection, all reasonable security, safety, and sanitation measures employed at the facility shall be followed by the secretary's representative.

(e) A written report listing all deficiencies found during the inspection and stating the measures required to correct the deficiencies shall be prepared and sent to the operator. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987, amended June 4, 1999.)

28-31-13. Variances. (a) Application. Any person may request a variance from specific provisions of these rules and regulations by submitting an application on a form provided by the department. The applicant shall state the reasons and circumstances that support the request and shall submit all other pertinent data to support the request.

(b) Review and public comment. A tentative decision to grant or deny a variance shall be made within 60 days of receipt of the application by the secretary, and a notice of the tentative decision shall be published in the Kansas register and in a newspaper in the county in which the variance is requested for written public comment. Upon the written request of any interested person, a public meeting may be held to consider comments on the tentative decision. The person requesting a meeting shall state the issues to be raised and shall explain why written comments would not suffice to communicate the person's views. After evaluating all public comments, a final decision shall be made by the secretary, and a notice of the final decision shall be published in the Kansas register. If approved, all conditions and time limitations needed to comply with all applicable state or federal laws or to protect human health or safety or the environment shall be specified by the secretary. The date after which the variance shall no longer be valid shall be provided in the final decision.

(c) Extension of a prior or existing variance. Any person may submit a request in writing to extend a prior or existing variance. The person shall demonstrate need for continuation of the variance. The variance may be reissued or extended for another period upon finding by the secretary that the reissuance or extension of the variance would not endanger human health or safety or the environment. Review and public comment procedures shall be the same as those specified in subsection (b).

(d) Termination of a variance. Any variance may be terminated, if the secretary finds one or more of the following conditions:

(1) Violation of any requirement, condition, schedule, or limitation of the variance;

(2) operation under the variance that fails to meet the minimum requirements established by state or federal

law or regulations; or

(3) operation under the variance that is unreasonably threatening human health or safety or the environment. Written notice of termination shall be provided to the person granted the variance.

(e) Emergency variances. If an incident involving hazardous waste requires immediate action to protect human health or safety or the environment, an emergency variance may be granted by the department from all requirements or any specific requirement of the Kansas hazardous waste regulations. The emergency variance shall remain in effect until the incident no longer presents an immediate hazard to human health or safety or the environment. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective May 1, 1982; amended T-85-42, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended June 4, 1999.)

28-31-14. Land Disposal Restrictions.

40 CFR Part 268, as in effect on July 1, 1996, is adopted by reference. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

28-31-15. Universal waste. 40 CFR Part 273, as in effect on July 1, 1996, is adopted by reference. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective June 4, 1999.)

28-31-16. Used oil. (a) 40 CFR Part 279, as in effect on July 1, 1996, is adopted by reference, except for 279.10(b)(3).

(b) Mixtures of used oil and hazardous waste generated by any small quantity generator shall be subject to regulation as used oil in accordance with K.A.R. 28-31-4(p)(3)(A).

(c) No person shall use used oil as a pesticide carrier, sealant, or coating, or for any other similar purpose.

(d) Each seller of more than 500 gallons per year

of lubricating oil or other oil in containers for use off the premises shall post and maintain, near the point of sale, durable and legible signs informing the public of the importance of collection and recycling of used oil. The signs shall indicate how and where used oil may be recycled and shall include locations and hours of operation of conveniently located collection facilities. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective June 4, 1999.) . . .